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Blacksburg, Virginia 24061
April 8, 2004

Docket Clerk
Document Management Facility
U.S.D.O.T.
400 Seventh Street, S.W., Room PL-401
Washington, D.C. 20590-0001

Re: Docket Number FMCSA-1997-2979- 88

Dear Sir or Madame,

I am writing to express support for consumer protection measures in the household goods moving industry. My own bitter experience of being scammed by a mover prompts me to write this letter. In August 2001 I moved from New Haven, Connecticut to Virginia to accept a teaching position at Virginia Tech. I did extensive research, including several calls to the DOT, before hiring AAA Van Lines. When my goods were loaded on the truck in New Haven, my estimate of $2230 (.43 per pound) became a demand for $4700 and the movers refused to provide any verification of weight or other explanation for the increase. They also provided no justification for demanding more than 110% of the estimate as a precondition to releasing my goods. My goods were held hostage for a week while I tried to reason with the company and while I tried to get law enforcement and regulatory agencies involved. No one helped me and I was forced to pay the ransom money ***in cash***, so that I could get my belongings and start my new job. Obviously these companies operate this way because they know they are likely to get away with it.

Since this experience, I have educated myself in a piece-meal way about the moving industry and my findings are shocking and disgusting. Consumer protection is urgently needed in the moving industry, which has been essentially unregulated since 1995. I understand that FMCSA has the ability and obligation to promulgate regulations to implement the laws passed by Congress, including the Household Goods Transportation Act, which authorizes "binding estimates" as a consumer protection measure. The FMCSA's predecessor, the Federal Highway Administration, acknowledged its ability and duty to protect the consumer in its May 15, 1998 introduction to the proposed rules, where it stated:

> Hostage Freight
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> The FHWA has been receiving an increasing number of complaints from individual shippers who claim carriers refuse to deliver their goods after the individual shippers offer to pay 110 percent of the estimate as prescribed by 49 CFR 375.3(d). These so-called hostage freight situations defeat the protections of the 110-percent rule and cause serious inconvenience to individual shippers. The FHWA does not have the resources to seek court injunctions to require these carriers to comply with the regulations and release the household goods. The FHWA, therefore, proposes changes to enhance an individual shipper's claim for damages based upon expenses incurred as a result of the carrier's

refusal to deliver the household goods, reduce the number of disputes contributing to delays in delivery, and restore price certainty to the transaction.

Two competing bills addressing this topic have recently been introduced in the House of Representatives. I understand that FMCSA does not have the power to enact new laws, but I would like to offer the following observations about the two competing bills. I do this to underscore the dire situation consumers of interstate moving services find themselves in today. I do this also because the American Moving and Storage Association (AMSA) filed another petition for reconsideration and to stay enforcement of the regulations, where they once again argue that moving companies may demand more than 110% of non-binding estimates or 100% of binding estimates (instead of releasing the goods upon payment of 100-110% and billing the customer for all remaining valid charges) because of additional services the customer "requests" of the moving company. The problem with AMSA's view is that it considers "services requested by the shipper" to include those services the mover has unilaterally decided are necessary to get the goods off the truck and into the destination residence (such as shuttles, long carries, and the catch-all "extra labor"). According to the practice of AMSA members, where the mover unilaterally decides that additional services are necessary to get the goods off the truck and into the destination residence, the customer who does not "agree" with the mover's unilateral decision will have his or her goods unloaded where the truck is parked (which may be on a street corner a block away) or, more likely, taken to storage (and the customer will then get hit with storage charges). Thus, according to AMSA's view of "services requested by the shipper," a shipper is not free to decline these additional services and will have no choice but to pay whatever amount the mover feels is deserved – even if the extra amount makes the final charges exceed 100-110% of the original estimate. In this situation, the customer is not in a position to disagree with the mover regarding the necessity for a shuttle, long carries, etc., nor is he or she free to dispute the amount the mover insists on collecting for these services (it is not realistic to expect the customer to have a full copy of the tariff to consult at destination). The additional services in this category are different in nature from unpacking, appliance servicing, etc., which are services the customer may decline if the customer does not agree with the price being demanded by the mover for these services.

FMCSA must make it clear that – as to that category of additional services that are part and parcel of getting the goods from inside the residence at point A to inside the residence at point B – the mover may not demand, as a precondition to relinquishing the goods, collection of these charges to the extent they make the final total charges exceed 100-110% of the original estimate. The moving company may bill for all valid amounts after releasing goods, so that the customer has a meaningful chance to determine whether the services were required and/or charged at the proper amount.

AMSA also suggests that the pending state of the two competing bills, with two competing versions of a maximum collection amount rule, are grounds for reconsideration and/or staying enforcement. However, I submit that the AMSA was instrumental in getting one of these bills introduced, and it is a bill that practically eliminates any maximum collection rule. In the end, the AMSA represents the industry from which the consumer must be protected. I submit that any petition filed by the AMSA must be considered with that fact fully in mind.

The bill favored by consumer advocacy groups is HR 1070. It was introduced by Rep. Thomas Petri (R-Wisconsin), Chair of the House Subcommittee on Highways & Transit,

at the behest of consumer advocacy groups concerned about rampant abuse. The other bill is HR 2928, which was introduced by Rep. Sherwood Boehlert (R-New York) after he received a $2,500 campaign contribution from the AMSA. HR 1070 is a good first step toward protecting consumers from being victimized by an out-of-control moving industry. In contrast, the AMSA-supported HR 2928 only exacerbates the current situation. These are the facts:

1) HR 1070 will finally enable local and state police to enforce Federal laws regulating interstate moving companies. State Attorneys General will be able to prosecute moving companies under state fraud and deceptive practices laws which are currently preempted by the Carmack Amendment. (This outdated amendment lets moving companies off the hook because it prevents consumers from suing in civil court for fraud, extortion (hostage freight), negligence, breach of insurance contract, conversion, intentional misrepresentation, negligent misrepresentation, and negligent infliction of emotional distress. All state laws are superceded by the Carmack Amendment.) ***No other industry enjoys such complete protection from the consequences of willful fraud or negligence.***

   If you have ever been a victim of a hostage load situation in which a mover held your belongings and demanded hundreds to thousands more than the original estimate, you probably know that local and state police will decline to get involved. Usually they will tell you that it's a civil matter—a contract dispute between you and the moving company—and that you must take the company to court. Again, if you've been a victim of a scam mover, you know that most attorneys will refuse to take such a case, even when there's unmistakable fraud, because all you stand to collect is the amount of the overcharge and/or the depreciated value of lost or damaged goods. The Carmack Amendment prevents you from suing for fraud, so you can't get punitive damages, and your legal fees will amount to more than the moving company is trying to steal from you.

   Rather than supporting a worthy bill like HR 1070 to remedy this situation, the AMSA has introduced a rival bill, HR 2928, that does not have a clear provision allowing state Attorneys General to act against moving companies engaging in interstate fraud. In defense of this consumer-unfriendly position, the AMSA has argued only that HR 1070 will promote "frivolous lawsuits."

2) HR 1070 explicitly codifies current regulations stating that a mover, upon delivery of the goods, cannot demand more than 110% of the original non-binding job estimate, or 100% of the original binding job estimate, as a precondition to relinquishing possession of the goods. In theory, consumers are now able to bring a civil suit when movers attempt to hold their goods hostage for more than 100-110% of the estimate. In practice, this rarely happens because so little in damages can be recovered. *The AMSA, with HR 2928, seeks to withhold even this minimal protection from the consumer, and leaves completely open-ended the amount that can be charged, even when a customer has been given a "binding" estimate.* Under HR 2928, before unloading a customer's belongings, moving companies will be allowed to demand whatever amount they want. With no maximum collection rule, HR 2928 in effect legalizes the practice of holding people's goods for ransom.

The AMSA keeps on trying to buy influence in Congress, as is shown by this statement in the August 1, 2003, issue of its newsletter: **"AMPAC** [the AMSA's Political Action

Committee, a lobbying group] **needs to raise a minimum of $15,500.00 by September 30, 2003, in order to gain the necessary political access to the thirty-one (31) members of Congress serving on the House Transportation and Infrastructure Committee who have not yet received campaign contributions from AMPAC this year." Its current lobbying and contributions to members of Congress who co-sponsor HR 2928 instead of HR 1070 continues to this day.** One of AMPAC's top priorities is defeating HR 1070.

However much it may be concerned about ensuring the survival of its own members, the AMSA is taking a stance that harms consumers and protects scam movers by continuing the status quo. Lawmakers who will decide this issue must understand that the AMSA-supported HR 2928, by eliminating the 100-110% restriction and by not being clear about whether State Attorneys General can pursue legitimate redress, takes away what little legal recourse consumers have. Without HR 1070, it is certain that consumers will keep on getting scammed because there is no deterrent. Honest movers who do not scam their customers should not be afraid of a bill that levels the playing field and protects consumers from the morally challenged in the moving industry. Honest moving companies have nothing to fear from HR 1070, but if HR 2928 passes, it will be "open season" on consumers. For reasons accepted only by its own members and others in the interstate moving industry, AMSA persists in its campaign to defeat HR 1070 and get HR 2928 passed.

Again, I stress that the AMSA represents the industry from which the consumer must be protected. Please consider any petition filed by the AMSA with that fact fully in mind.

Sincerely,

Kay F. Edge